

V. PUBLICITY

AT&T and MCD agree that neither party shall use the other's name or logo in connection with promotional, advertising or other marketing material, without the express written permission of the other.

VI. OWNERSHIP OF INFORMATION AND BRAND PROTECTION

AT&T and MCD understand and agree that nothing in this Agreement creates any right, title or interest in the names, logos, trade names or trademarks (collectively, "Marks") of the other Party. In the event that information is developed or generated solely by AT&T or jointly by AT&T and MCD for use in providing outreach services ("Information"), AT&T will own all right, title and interest therein. MCD shall submit any material referencing AT&T and/or AT&T Relay Service Marks to AT&T for approval not less than fifteen (15) business days prior to any planned publication or distribution. AT&T grants to the MCD a non-exclusive, irrevocable, royalty-free license to use such Information consistent with the purposes of this Agreement for the period during which this Agreement is in effect. MCD acknowledges the value of AT&T's brand and its potential benefit to MCD. MCD shall use reasonable business efforts to avoid marketing activities connected with the brand which are likely to damage AT&T's brand or the AT&T Relay Service, or which may result in significant adverse publicity concerning AT&T's image.

VII. INDEPENDENT CONTRACTORS

a. Each party shall perform its obligations hereunder as an independent contractor and not as the agent, employee or servant to the other party. Neither party nor any person employed by such party nor any person acting on behalf of such party shall be deemed the employee, agent or servant of the other party or entitled to any benefits available for any injury to, or death of any of its employees, or damages to its property while engaged in the performance of its obligations hereunder.

b. Each party has and hereby retains the right and obligations to exercise full control of and supervision over its own performance of the obligations under this Agreement and retains full control over the employment, direction, compensation, and discharge of all employees assisting in the performance of such obligations. Each party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes, and all other regulations governing such matters. Each party will be responsible for its own acts and those of its subordinates, employees, agents, and subcontractors during the performance of that party's obligations hereunder.

VIII. PROTECTION OF PROPRIETARY INFORMATION

Any information such as specifications, drawings, sketches, models, samples, data, computer programs or other software or documentation, business plans or

market strategy, tactics, studies or results of AT&T that is furnished or available or otherwise disclosed to MCD shall be deemed the property of AT&T. When specifically designated as proprietary information (or when in tangible form, identified by a marking, which need not be on every page, stating its proprietary or confidential nature) such information whether provided pursuant to this Agreement or otherwise ("Information") shall be subject to the following provisions:

a. When in tangible form, Information shall be returned upon request, including all copies. Unless any Information was previously known to MCD free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to MCD, or unless AT&T agrees in writing that Information is not to be regarded as confidential, Information shall be held in confidence by MCD and its employees and shall be used only for purposes of this Agreement or other purposes only if specified in writing by AT&T. MCD shall immediately notify AT&T if any Information designated or marked as proprietary was previously known to MCD free and clear of any opportunity to keep it confidential or has been made public. MCD will not disclose Information to third parties without the prior written consent of AT&T, and MCD will use Information only for the purpose of its performing under this Agreement. MCD will disclose Information only to those employees of MCD who have a need to know it for the purposes specified herein or other purposes specified in writing by AT&T.

b. MCD agrees to give notice to AT&T of any demands to disclose or provide Information under lawful process prior to disclosing or furnishing such Information, and agrees to cooperate in seeking reasonable protective arrangements requested by AT&T. In addition, MCD may disclose or provide Information requested by a government agency having jurisdiction over MCD, provided that MCD obtains protective arrangements satisfactory to AT&T and provide further that AT&T may not unreasonably withhold approval of the protective arrangements.

c. No rights are granted expressly or impliedly: (i) with respect to the invention of any patent; or (ii) to reproduce Information, except copies may be made as needed for purposes specified herein, or as authorized by AT&T in writing.

d. Nothing in this Agreement shall be construed to obligate AT&T to provide any Information to MCD or preclude the provision of Information to MCD at an applicable fee, pursuant to the terms of another arrangement.

e. The provisions of this Section shall remain in effect notwithstanding the termination of this Agreement.

IX. ASSIGNMENT

AT&T shall have the right to assign this Agreement and to assign its rights and delegate its duties under this Agreement either in whole or in part (an "Assignment"), including, but not limited to, software licenses and other grants of intellectual property rights, at any time and without MCD's consent, to (i) any present or future affiliate (including any wholly-owned subsidiary or affiliated entity thereof) of AT&T (ii) any unaffiliated new entities that may be formed by AT&T pursuant to a corporate reorganization, including any subsidiary or affiliated entity thereof. AT&T shall give MCD's written notice of any Assignment including (i) the effective date of the Assignment ("Effective Date"), and (ii) the entity or entities receiving rights and/or assuming obligations thereunder ("Entities"). Upon the Effective Date and to the extent of the Assignment, AT&T shall be released and discharged from all further duties under this Agreement as to materials or services transferred to assigned, ordered for or provided prior to, on or after the Effective Date and MCD shall look only to the assignee for performance of obligations related thereto. Notwithstanding that an Assignment has been made, AT&T, at its sole option, shall continue to have the right to purchase, lease, or license material or services under this Agreement as if an Assignment had not been made. If this Agreement includes a commitment to purchase a stated or determinable quantity of goods, services or rights, or prices that vary based on the quantities purchased, the aggregate of purchases under this Agreement by AT&T and the Entities will be included in the quantity.

In addition to the rights of assignment to successor entities as identified above, any other assignment by either party of any right, obligation, or duty, in whole or in part, or of any other interest hereunder, without the express written permission of other party, which shall not be unreasonably withheld, shall be void. All obligations and duties of any party under this Agreement shall be binding on all successors in interest and assigns of such party.

X. NOTICE AND DEMAND

Except as otherwise provided under this Agreement, all notices, demands, or request which may be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person or three days after deposited, postage prepaid, in United States mail via Certified Mail, return receipt requested, and addressed as follows:

To MCD:

Jonathan Connick
Maine Center on Deafness, Inc.
68 Bishop Street, Suite 3
Portland, Maine 04103

To AT&T

Patricia Brennan
AT&T Accessible Communications Services
295 North Maple Avenue, Rm. 7128K2
Basking Ridge, NJ 07920

If personal delivery is selected as the method of giving notice under this section, a receipt of such delivery shall be obtained. The address to which such notices,

demands, requests, elections or other communications are to be given by either Party may be changed by written notice given by such party to the other party.

XI. TERMINATION

- a. In the event that the TRS MOU Agreement is terminated, this Agreement shall terminate on the service effective date of termination. If the TRS MOU Agreement is terminated on or before October 17, 2003 by a party other than AT&T, then MCD shall refund to AT&T a proportional amount of the _____ annual fee paid by AT&T. Such payment shall be due and owing no later than 10 days after the effective date of termination.
- b. Either party may terminate this Agreement without cause upon ninety (90) days' written notice to the other party. If MCD terminates this Agreement on or before September 17, 2003, then MCD shall refund to AT&T a proportional amount of the _____ annual fee paid by AT&T. Such payment shall be due and owing no later than 10 days after the effective date of termination.
- c. Either party may terminate this Agreement for cause upon thirty (30) days' written notice to the other party. "Cause under this subsection consists of a material breach of the terms of this Agreement which include, but are not limited to, a failure to perform in accordance with the terms hereof such as a violation of Section VI. The Agreement may be terminated by either party by delivering written notice of termination to the party not less than thirty (30) days before the effective date of such termination. However, AT&T retains the right to terminate this agreement at any time, if funds are not appropriated and available to AT&T for contract management services. This Agreement may only be amended in writing by an amendment signed by both parties.

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XII. LIMITATION OF LIABILITY

AT&T shall not be liable for indirect, incidental, special or consequential damages or for lost savings or revenues of any kind whatsoever, whether or not AT&T has been advised of the possibility of such damages.

XIII. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be construed in accordance with and governed by the laws of the State of Maine.

XIV. WAIVER

If either party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure will not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

XV. ENTIRE AGREEMENT

This is the entire agreement between the parties with respect to the services provided hereunder and supersedes all prior agreements, proposals or understandings, whether written or oral. This Agreement may only be amended in writing by an amendment signed by both parties.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed this agreement as the date written below.

MCD:

AT&T:

Jonathan Connick
Maine Center on Deafness, Inc.
68 Bishop Street, Suite 3
Portland, Maine 04103

AT&T Accessible Communications Services
295 North Maple Avenue, Room 7128K2
Basking Ridge, NJ 07920

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____